

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of )

JAMES C. HODGE, former President and )  
Chairman of the Board of )  
Mercantile Savings Bank, )  
Southaven, Mississippi )

Re: Resolution No.: DAL-92-71

Dated: October 16, 1992

STIPULATION AND CONSENT TO THE ENTRY OF AN  
ORDER OF ASSESSMENT OF CIVIL MONEY PENALTIES

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office of the OTS, and James C. Hodge ("Hodge"), former President and Chairman of the Board of Mercantile Savings Bank, Southaven, Mississippi ("Mercantile") stipulate and agree as follows:

1. CONSIDERATION

The OTS, based upon information reported to it, is of the opinion that grounds exist to initiate an administrative civil money penalty assessment proceeding against Hodge pursuant to Section 8(i)(2) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.S. § 1818(i)(2) (Supp. 1992). Hodge desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation and, without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such administrative civil money penalty assessment proceeding against Hodge with respect to the following regulatory violations, as determined by the OTS:

- (a) 12 C.F.R. §§ 337.6(b) and 563.4(c) - Hodge accepted brokered deposits in the amount of \$5,936,000 between February 7, 1991 and February 12, 1991, on behalf of Mercantile without proper regulatory approval and without the approval of the Board of Directors, while it was failing to meet its minimum regulatory capital requirements;
- (b) 12 C.F.R. § 303.13(d) - Hodge oversaw excessive investments in Mercantile's service corporation, Mercantile Mortgage Corporation, without regulatory approval, as cited in the OTS reports of examination dated April 2, 1990 (18.43% of assets when limitation was 2% of assets), and January 12, 1991 (9.36% of assets when limitation was 2% of assets);
- (c) 12 C.F.R. § 563.131 - Hodge, as President, caused Mercantile to violate its growth restrictions imposed by 12 C.F.R. § 563.131, as cited in the OTS report of examination dated April 2, 1990. Liability growth exceeded the 12.5% limitation of 12 C.F.R. § 563.131(a)(1) in the two quarter periods ending June 30, 1989 (60%) and December 31, 1989 (17%);
- (d) 12 C.F.R. § 563.170(b) & (c) - Hodge, as President, failed to maintain accurate and complete records on Mercantile's foreclosure claims receivable, as cited in the OTS reports of examination dated April 2, 1990 and January 14, 1991;

- (e) 12 C.F.R. § 563.233 - Hodge, as President, allowed reporting errors in the December 1990 Thrift Financial Report, as noted in the January 14, 1991 OTS report of examination. Hodge also failed to accurately reflect and account for Mercantile's investment in its service corporation, Mercantile Mortgage Corporation; and its total withdrawable accounts on its Thrift Financial Reports and Mercantile's books, as noted in the OTS report of examination dated April 2, 1990. Hodge failed to maintain accurate records, properly disclose assets, and account for foreclosure claims, as noted in the January 14, 1991 OTS report of examination; and
- (f) 12 C.F.R. § 563.43, 12 U.S.C.S. § 1468 (1992), 12 U.S.C.S. § 375b (1992), 12 C.F.R. §§ 215.4 and 215.7 - Hodge sold his stock of Mercantile's service corporation, Mercantile Mortgage Corporation, to CSB Mortgage Corporation on April 19, 1985, which transferred personal liability from Hodge and another Mercantile director to Mercantile. This transaction also involved the granting of loans to Hodge and another Mercantile director to effectuate a settlement agreement arising from disputes over the original contract of sale, which were made in violation of 12 C.F.R. § 563.43. These conflicts of interest were cited in the OTS report of examination dated April 2, 1990. Other conflicts of interest

include Hodge' overdrafts in three checking accounts at Mercantile in amounts up to \$17,361, advances by Mercantile to Hodge in the amount of \$38,532 as of March 31, 1990, and personal expenses of Hodge paid by Mercantile, all of which Hodge reimbursed to Mercantile during the April 2, 1990 OTS examination where they were cited. Additional conflicts of interest cited in the January 14, 1991 OTS report of examination include two interest-free advances totaling \$100,433 made to Hodge on August 13, 1990 and September 28, 1990, which, although were repaid with interest during the January 14, 1991 OTS examination, constitute extensions of credit greater than \$100,000 in violation of 12 C.F.R. § 563.43(b)(5); overdrafts in Hodge's account on May 21, 1990 and June 18, 1990 in the amounts of \$1,483 and \$4,205 which were paid along with NSF charges by Hodge during the January 13, 1991 OTS examination; and expenses incurred by Hodge and paid by Mercantile for fourteen charges totaling \$472 with insufficient documentation to determine if they were personal or business related which were reimbursed to Mercantile by Hodge during the January 14, 1991 OTS examination. (collectively, the "allegations").

2. JURISDICTION

- (a) Mercantile, at all times relevant to the allegations set forth herein, was a "savings association" within

the meaning of Section 3(b) of the FDIA, 12 U.S.C.S. § 1813(b) (Supp. 1992) and Section 2(4) of the Home Owners' Loan Act of 1933, 12 U.S.C.S. § 1462(4) (1992). Accordingly it was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C.S. § 1813 (c) (1992).

- (b) Hodge was, at all times relevant to the allegations set forth herein, an officer and director of Mercantile and as such was an institution-affiliated party within the meaning of 12 U.S.C.S. § 1813(u) (Supp. 1992).
- (c) The OTS alleges that contrary to safe and sound practices, Hodge, as President and Chairman of the Board of Mercantile, engaged in, or aided and abetted in the regulatory violations set forth above in Paragraph 1(a)-(f).
- (d) Pursuant to Section 3 of the FDIA, OTS is the "appropriate Federal banking agency" to maintain civil money penalty assessment proceedings against an institution-affiliated party. Therefore, Hodge is subject to the authority of OTS to initiate and maintain the assessment of a civil money penalty pursuant to 12 U.S.C.S. § 1818(i)(2) (Supp. 1992).

3. CONSENT

- (a) Hodge consents to the issuance by the OTS of the accompanying Order and further agrees to comply with

its terms upon issuance and stipulates that the Order complies with all requirements of law.

- (b) Hodge acknowledges that the civil money penalty owed pursuant to the Order is not dischargeable under the Bankruptcy Code, in accordance with 11 U.S.C.S. § 523(a)(7) (1986).
- (c) Hodge acknowledges and agrees that this proceeding, the assessment or payment of the penalty contemplated as part of the resolution thereof, and Hodge's consent to the entry of the Order are for the purposes of resolving this OTS enforcement matter only, and do not compromise, settle, dismiss, resolve, affect or preclude any other civil or criminal actions, charges against, or liability of Hodge that arise pursuant to this action or otherwise, and that may be or have been brought by the Resolution Trust Corporation or any other governmental entity other than the OTS.
- (d) The OTS acknowledges and agrees that the execution and delivery by Hodge of this Stipulation and Consent to the Entry of an Order of Assessment of Civil Money Penalties and the corresponding Order, and the Stipulation and Consent to the Entry of a Cease and Desist Order and the corresponding Order, and the compliance by Hodge with the terms thereof, are intended and issued as a settlement and resolution of all claims of the OTS against Hodge relating only to

the transactions specifically described in Paragraph Number 1(a)-(f) of this Stipulation, and are not intended to, nor shall they be construed to have the effect of compromising, settling, dismissing, resolving, or in any way limiting or affecting the right or authority of any other federal or state governmental or administrative agency or department, or conservator or receiver, to initiate or pursue any other action, civil or otherwise, against Hodge.

- (e) The OTS acknowledges and agrees that this action is civil in nature pursuant to the provisions of Section 8(b) of the FDIA, 12 U.S.C.S. § 1818(b) (Supp. 1992).
- (f) By signing this document, Hodge agrees that he will not assert the assessment or payment of this penalty as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

4. FINALITY

The Order is issued under 12 U.S.C.S. § 1818(i)(2) (Supp. 1992). Upon its issuance by the Regional Director for the Midwest Region of the OTS, it shall be a final order, effective and fully enforceable by OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C.S. § 1818(i) (Supp. 1992).

5. WAIVERS

Hodge waives the right to a Notice of Assessment of Civil Money

Penalty provided by Section 8(i) of the FDIA, 12 U.S.C.S. § 1818(i) (Supp. 1992), and the administrative hearing provided by 12 U.S.C.S. § 1818(i)(2)(H) (Supp. 1992), and further waives his right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C.S. § 1818(h) (Supp. 1992), or to otherwise challenge the validity of the Order.

6. GENERAL PROVISIONS

- (a) References in this Stipulation and Consent and in the corresponding Order to provisions of statutes and regulations shall, unless the context thereof clearly indicates otherwise, include references to all amendments thereto.
- (b) All terms not otherwise defined herein that are defined in the HOLA, FDIA, FIRREA, the Rules and Regulations of the OTS (including, without limitation, 12 C.F.R. §§ 500.1 et seq., 541.1 et seq., and 561.1 et seq. (1992)) or its publicly-available Bulletins and Advisory Memoranda shall have the meanings to them in such statutes, rules and regulations, Bulletins, or Advisory Memoranda. All technical words or terms not otherwise subject to a definition in this Stipulation shall have the meanings that accord with the best custom and usage in the thrift industry.
- (c) Requests for extension of time frames may be denied or approved through a letter by the Regional Deputy



Director upon a showing of good cause. Such extensions of time frames shall become effective upon ten days after the date of the letter unless Hodge files a written objection with the Regional Deputy Director.

WHEREFORE, in consideration of the foregoing, the Regional Director for the Midwest Regional Office of the OTS, on behalf of the OTS, and Hodge have executed this Stipulation and Consent to the Entry of Order of Assessment of Civil Money Penalties as of the date first above written.

OFFICE OF THRIFT SUPERVISION

JAMES C. HODGE

By:

/S/

/S/

Frederick R. Casteel  
Regional Director  
Midwest Regional Office  
Dallas, Texas

James C. Hodge

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ORDER OF ASSESSMENT OF CIVIL MONEY PENALTIES

WHEREAS, James C. Hodge ("Hodge") has executed a Stipulation and Consent to The Entry of Order of Assessment of Civil Money Penalties, which is incorporated herein by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS") acting through the Regional Director for the Midwest Region; and,

WHEREAS, Hodge, in the Stipulation, has consented to the issuance of this Order of Assessment of Civil Money Penalties pursuant to Section 8(i)(2) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.S. §§ 1818(i)(2) (Supp. 1992);

NOW THEREFORE, IT IS ORDERED that within fifteen days of the effective date of this Order, Hodge shall pay to the OTS a sum of \$20,000, by tendering a check to the OTS in that amount made payable to the Treasurer of the United States, and such check shall be sent to the attention of D'Andra Askev of the Midwest Regional Office of the OTS.

OFFICE OF THRIFT SUPERVISION

By: /S/  
Frederick R. Casteel  
Regional Director  
Midwest Regional Office  
Dallas, Texas